

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sarah Hyde	Team: Team # 3	CCRB Case #: 200815654	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 10/28/2008 9:00 PM	Location of Incident: § 87(2)(b)	Precinct: 67	18 Mo. SOL 4/28/2010	EO SOL 4/28/2010	
Date/Time CV Reported Thu, 10/30/2008 9:53 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 10/30/2008 9:53 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Edward Babington	00426	932283	067 PCT
2. POM Mark Beelitz	09626	938049	067 PCT
3. An officer			
4. LT John Meier	00000	905466	067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Matthew Gorans	12993	938599	067 PCT
2. POM Dominick Nasso	26520	924241	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Edward Babington	Abuse: Sgt. Edward Babington supervised the entry and search of § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B. An officer	Abuse: An officer threatened to arrest § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
C.SGT Edward Babington	Abuse: Sgt. Edward Babington damaged § 87(2)(b)'s property.	§ 87(2)(b)
D.SGT Edward Babington	Abuse: Sgt. Edward Babington seized § 87(2)(b)'s property.	§ 87(2)(b)
§ 87(4-b) § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(4-b) § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

§ 87(2)(b) filed a complaint with the CCRB by telephone on October 30, 2008 (encl.4a-4c)

On October 28, 2008, at about 9:00 PM, Sgt. Edward Babington, PO Mark Beelitz, PO Matthew Gorans, and PO Dominick Nasso from the 67th Precinct entered § 87(2)(b) in Brooklyn. The following allegations resulted:

- **Allegation A – Abuse of Authority:** Sgt Edward Babington supervised the entry and search of § 87(2)(b) in Brooklyn. § 87(2)(g)
- **Allegation B – Abuse of Authority:** An officer threatened to arrest § 87(2)(b) and § 87(2)(b)
- **Allegation C – Abuse of Authority:** Sgt. Edward Babington damaged § 87(2)(b)'s property. § 87(2)(g)
- **Allegation D – Abuse of Authority:** Sgt. Edward Babington supervised the seizure of § 87(2)(b)'s property. § 87(2)(g)
- § 87(4-b) § 87(2)(g)

Results of Investigation

Civilian Statement(s)

Complainant/Victim: § 87(2)(b)
§ 87(2)(b) is a § 87(2)(b)-old black male who is 5'10" tall, weighs 170 pounds, and has brown hair and brown eyes. § 87(2)(b)

CCRB Testimony

§ 87(2)(b) provided an initial statement to the CCRB on October 30, 2008 (encl.4a-4c), a phone statement on November 3, 2008 (encl.4d), and an official statement on November 10, 2008 (encl.4e-4i). § 87(2)(g)

At the time of the incident, § 87(2)(b) was self-employed and leasing the main floor (street level) and the basement of § 87(2)(b) in Brooklyn for his § 87(2)(b) business. § 87(2)(b) did not have regular hours of operation for his business; he was usually there from 8 AM until 10 PM on a daily basis. The main floor was used for the § 87(2)(b) business, while the basement was used for “entertainment” purposes. During the evening hours, § 87(2)(b) frequently invited friends over to play dominoes. § 87(2)(b) and his friends do not gamble or play dominoes for money. He does not charge them for entry or alcoholic beverages.

On October 28, 2008, § 87(2)(b) had friends over. The basement in which they were hanging out consisted of two rooms: one room had a table set up for playing dominoes; the other room was set up like a bar with a countertop. A refrigerator was behind the bar; there was alcohol in the refrigerator. During these gatherings, both § 87(2)(b) and his friends supplied alcohol. Sometimes he bought it, sometimes his friends bought it, and sometimes everyone pooled their money together to buy it. Alcohol was not being sold on the premises. For security purposes, § 87(2)(b) had a monitor set up in the basement which showed video footage of the front entrance (at the street level).

§ 87(2)(b)'s friends began to arrive around 7:30 PM. The gathering consisted of § 87(2)(b) and § 87(2)(b). The group started playing dominos and drinking alcohol shortly after everyone arrived. At approximately 9:00 PM, the front doorbell rang four or five times. § 87(2)(b) looked at his monitor and saw two uniformed police officers standing at the entrance. These officers were identified through investigation as Sgt. Edward Babington and PO Mark Beelitz. § 87(2)(b) decided not to answer the door because officers have bothered him and his friends in the past and issued them summonses; he did not want to be issued more summonses. He did not recall what these previous summonses were for, but they were dismissed and he never had to go to court for them.

The front door was locked at the time. After ringing the doorbell several times, the officers disappeared from view on the monitor. Then, § 87(2)(b) heard the front door rattling and it sounded as though the officers were picking the front lock. He could not see this happening on the monitor; he could only hear it. At that point, § 87(2)(b) decided to lock the gate at the basement's entrance. The gate is made of metal and has a crisscross pattern. The officers successfully picked the front lock and entered the building. The lock was not damaged as a result of the officers' actions. The officers immediately walked downstairs to the basement. They stood at the gate and one of them yelled, “Open the door or else we’re going to shoot off the lock! Everybody’s going to jail!” During § 87(2)(b)'s initial complaint to the CCRB, he alleged that the officers stated, “Open the door or we will break it in!” § 87(2)(b) and his friends were in the domino room and were hidden from view; as a result, they could not see the officers and § 87(2)(b) did not know who made these statements.

The officers bent the crisscrossed metal on the gate so that they could reach through and unlock the gate from the other side. § 87(2)(b) noticed later that the gate was damaged as a result. Sgt. Babington, PO Beelitz, and two additional officers, identified through investigation as PO Dominick Nasso and PO Matthew Gorans, entered the basement. § 87(2)(b) immediately asked the officers if they had a warrant. Sgt. Babington, who later wrote down his name and command on a piece of paper for § 87(2)(b) replied that they did not have a warrant, but that they had to force their way into the basement because § 87(2)(b) did not answer the door. The officers proceeded to search the basement. They looked in the boiler room, which is a small closet-sized room. They looked in the bathroom and inside the water meter. One of the officers,

§ 87(2)(b) did not recall which one, opened the refrigerator, and confiscated about 36 bottles of beer (both alcoholic and non-alcoholic), a bottle of whiskey, a bottle of gin, and a bottle of champagne. Sgt. Babington and another officer looked through § 87(2)(b)'s real estate papers that were lying on the domino table. The search of the basement lasted about five minutes.

The officers requested everyone's IDs, which were immediately provided. All of the officers, except for Sgt. Babington, left the basement and went outside with the IDs. Sgt. Babington remained inside and spoke to § 87(2)(b). Sgt. Babington told § 87(2)(b) that he should have answered the door. He told § 87(2)(b) that there had been a complaint about dominos and alcohol at that location. § 87(2)(b) did not recall what else they talked about. About 30 minutes later, the other officers returned. § 87(2)(b) was given six summonses for § 87(2)(b). Everyone else was given one summons each for § 87(2)(b). § 87(2)(b) did not believe that he and his friends were acting illegally by playing dominos in his basement. He was not selling alcohol and he was not charging individuals to enter the premises. He was not operating any sort of illegal business out of the basement.

§ 87(2)(b) provided the name § 87(2)(b) identified through investigation as § 87(2)(b) as an employee of the business located across the street. § 87(2)(b) provided § 87(2)(b)'s phone number and indicated that he had witnessed the officers' initial entry into the location.

Victim: § 87(2)(b)
§ 87(2)(b) is a black male. He was uncooperative in providing a sworn statement to the CCRB; however, he provided a phone statement on November 21, 2008 (encl.6) § 87(2)(b).

§ 87(2)(b) who is Jamaican, frequents § 87(2)(b)'s § 87(2)(b) basement to "play games and drink beer" with other Jamaicans. He was present during the incident on October 28, 2008, around 9:00 PM. § 87(2)(b) initially indicated that the group was drinking beer and wine; however, later in his statement, he stated that no one was drinking alcohol.

When § 87(2)(b) saw the officers in the video monitor, one of them removed a pocket knife from his pocket and picked the lock on the front door. This happened quickly and he could not identify which officer picked the lock. The officers entered and immediately came downstairs to the basement. The metal gate leading into the basement was locked and the officers could not enter the basement. An officer yelled, "We're going to shoot the fucking door off!" and "All of you are going to jail tonight!" The officers picked the lock on the gate with some kind of tool, although § 87(2)(b) did not know what they used. As this was happening, § 87(2)(b) could hear a loud banging; he later learned that the officers bent the metal on the gate so that they could reach through and unlock it. § 87(2)(b) was issued a summons for § 87(2)(b).

Victim: § 87(2)(b)
§ 87(2)(b) is a black male. He was uncooperative in providing a sworn statement to the CCRB; however, he provided a phone statement on December 1, 2008 (encl.8) § 87(2)(b).

On the date of the incident, § 87(2)(b) was drinking a soda while the group of friends played dominos; however, others were drinking beer. § 87(2)(b) indicated that the last time officers came to § 87(2)(b)'s basement, he was arrested. Around 9:00 PM, when the officers

arrived, they banged on the front door four or five times, picked the lock and then entered the location. When they reached the locked gate, which led to the basement, one of the officers went back outside and retrieved a crowbar. One of the officers yelled, "We know you're down there. If you don't open the door, we're going to have to use force and shoot off the lock!" The officers forced the gate open with the crow bar.

When the officers returned with everyone's IDs, one of the officers told § 87(2)(b) that he had an active warrant and that he better go home right away. § 87(2)(b) was not issued a summons and he was allowed to leave.

Victim: § 87(2)(b)
§ 87(2)(b) is a black male. He was uncooperative in providing a sworn statement to the CCRB; however, he provided a phone statement on December 1, 2008 (encl.7). § 87(2)(g)

§ 87(2)(b) indicated that on the date of the incident, no one was drinking alcohol. There was beer in the refrigerator; however, no one was drinking it. Around 9:00 PM, when the officers arrived at the location, they rang the buzzer about two times, picked the lock, and entered. When they reached the gate, which led to the basement, an officer stated that they would "shoot off the door and take them off to jail." One of the officers retrieved a crow bar then bent the gate to open it. While searching the basement, one of the officers went into the refrigerator and confiscated two boxes of beer and wine. § 87(2)(b) was issued a summons for § 87(2)(b) however, he was not drinking.

Witness: § 87(2)(b)
§ 87(2)(b) is a black male. § 87(2)(b) provided a phone statement on December 1, 2008 (encl.5a) and was interviewed at § 87(2)(b) on April 17, 2009 (encl.5b-5d). § 87(2)(g)

On October 28, 2008, around 9:00 PM, § 87(2)(b) saw a marked patrol car pull up in front of § 87(2)(b). Sgt. Babington and PO Beelitz, identified through investigation, got out and approached the front door. The officers rang the doorbell at least twice; however, no one answered. It appeared as though the officers were avoiding the view of a camera located above the entrance. About five to ten minutes later, § 87(2)(b) saw the officers pick the lock on the front door. It appeared as though they picked it with a credit card, although § 87(2)(b) could not be positive about what kind of object they used to pick the lock. The officers entered the location and left the front door wide open.

While Sgt. Babington and PO Beelitz were inside the location, a second patrol car arrived. Two additional officers, identified as PO Gorans and PO Nasso, exited the car and entered the location (the door was still wide open). A short time later, one of the officers, § 87(2)(b) was unsure which one, exited the location carrying a Heineken beer box. The box appeared to hold approximately 24 bottles, but § 87(2)(b) was unsure whether the box actually contained Heineken beer. However, by the manner in which the officer was carrying the box, it appeared to be full. The officer placed the box into the backseat of the patrol car that had arrived first. He also retrieved what appeared to § 87(2)(b) to be a crowbar from the trunk. The crowbar was dark-colored, slender, and about three feet long. The officer held the crow bar in his right hand as he walked back inside the location. About 30 minutes later, § 87(2)(b) was closing the bodega and he left prior to anyone else exiting or entering § 87(2)(b). He did not witness anything further.

Attempts to Contact Additional Civilians

§ 87(2)(b) provided only a phone number for § 87(2)(b). § 87(2)(b) was contacted on January 26, 2009; he was brief on the telephone, but agreed to an appointment on February 5, 2009. § 87(2)(b) missed his appointment; the CCRB called him on February 9, 2009 and February 10, 2009 in an attempt to reschedule. Messages were left both times. On April 13, 2009, copies of the summonses issued during this incident were received by the CCRB, and § 87(2)(b)'s address was obtained. § 87(2)(b) was mailed letters on April 13, 2009 and May 18, 2009. To date, § 87(2)(b) has not responded to these attempts to reschedule his appointment.

§ 87(2)(b) was unable to provide contact information for § 87(2)(b). A Lexis-Nexis search yielded negative results; however, a search of the DMV database uncovered one § 87(2)(b) living in Brooklyn. This individual was sent a letter on January 6, 2009 and she contacted the CCRB on January 9, 2009. She indicated that she does not know § 87(2)(b) and was not present at § 87(2)(b) on October 28, 2009.

NYPD Statement(s):

Subject Officer: SGT. EDWARD BABINGTON

- § 87(2)(b) -old white male, height 6'3", weight 235 pounds, bald with green eyes.
- On the date of incident, Sgt. Babington was assigned to the 67th Precinct as the Conditions Sergeant. He worked from 5:15 PM until 2:12 AM with Lt. John Meier and PO Mark Beelitz in marked patrol car 1627. He was dressed in uniform.

Memo Book

Sgt. Babington made entries in his memo book relating to the incident. At 9:10 PM, summonses were served (encl.9a-9d).

CCRB Testimony

Sgt. Babington was interviewed at the CCRB on July 29, 2009 (encl.9e-9f). On October 28, 2008, Sgt. Babington worked from 5:15 PM until 2:12 AM the following morning. He was the Conditions Sergeant, and was working in uniform with Lt. Meier and PO Beelitz in marked patrol car 1627.

At approximately 9:00 PM, Sgt. Babington was patrolling with his partners when he observed a storefront at § 87(2)(b) with the metal security gate halfway down and the front door ajar. He could see from the street that the door was ajar – it appeared as though someone had exited and had not pulled the door closed. He believed that a possible robbery or burglary had occurred and decided to investigate. He and PO Beelitz approached, pushed the door open, and entered. As they entered, it appeared as though the first floor (street level) was a § 87(2)(b) office. The officers verbally identified themselves as police officers. They heard movement and voices downstairs, in the basement. The officers proceeded down the stairs to the basement. At the bottom of the stairs there was a metal gate with a crisscross pattern. The gate was locked. The officers verbally identified themselves as police officers at least three times. Sgt. Babington denied threatening to arrest anyone or threatening to shoot the door open. He could hear people whispering and moving around in the basement and the lights were turning on and off. No one responded when the officers identified themselves and no one came to the gate.

The gate had a slide lock on the interior. Sgt. Babington bent the metal, stuck his pen through the hole, slid the lock to the right and unlocked the gate. As a result, there was minor damage to the gate. One of the bars was bent slightly, but it was not damaged to the point where

the gate could not lock or function properly. When the officers entered the basement, they turned a corner, and realized that the location was operating as an illegal social club. A bar and card games were set up. Sgt. Babington saw dice, a TV set, streamers and party signs. There were open, cold beers on the bar and on the tables where people were sitting. There were about 10 – 15 people in the basement.

Sgt. Babington spoke with § 87(2)(b) who was agitated, screaming and yelling for thirty minutes. Sgt. Babington explained that the officers had entered the location to make sure no one was hurt inside, and that the officers were allowed to do so. He described the rules of a social club to § 87(2)(b). § 87(2)(b) indicated that he didn't know the rules. Several people at the location were issued summonses. Alcohol (three boxes of assorted alcohol that was found in plain view) and party signs were confiscated. Although § 87(2)(b) was initially upset, he eventually calmed down. At some point, he became friendly with Sgt. Babington and even gave Sgt. Babington his business card; he told Sgt. Babington to see him if he ever needed a mortgage.

The basement was not searched. The officers looked for additional people (in the bathroom, in the storage room etc.), but they did not open any containers, or the refrigerator. The situation was non-confrontational and lasted 40 minutes. When the officers left, the metal gate was in working condition. If the gate had been broken, Sgt. Babington would have completed a report. This was Sgt. Babington's first time at the location; he did not know that it was a social club prior to this incident.

Subject Officer: PO MARK BEELITZ

- § 87(2)(b) -old white male, height 6'2", weight 195 pounds, brown hair and brown eyes.
- On the date of the incident, PO Beelitz was assigned to the 67th Precinct Conditions Unit. He worked from 10:00 AM until 11:35 PM with Lt. John Meier and Sgt. Edward Babington in marked patrol car 1627. He was dressed in uniform.

Memo Book

PO Beelitz did not have any memo book entries relating to the incident (encl.10a-10b).

Summonses

PO Beelitz issued six summonses (encl.10c-10d) to § 87(2)(b) during the incident:

§ 87(2)(b), § 87(2)(b), § 87(2)(b), § 87(2)(b), § 87(2)(b), § 87(2)(b), § 87(2)(b), § 87(2)(b), § 87(2)(b), § 87(2)(b), and § 87(2)(b).

CCRB Testimony

PO Beelitz was interviewed at the CCRB on June 9, 2009 (encl.10e-10g). § 87(2)(g)

On October 28, 2008, at approximately 9:00 PM, PO Beelitz, Sgt. Babington and Lt. Meier observed the gate to § 87(2)(b) halfway raised and the front door slightly ajar. The premises appeared to be a § 87(2)(b) business and had glass doors and windows. PO Beelitz did not recall seeing anything else that appeared unusual or suspicious other than the open gate and door. The officers collectively decided that these factors were suspicious and so PO Beelitz and Sgt. Babington went inside to investigate. Lt. Meier stayed by the patrol vehicle for safety purposes. PO Beelitz did not pick the lock on the front door of the premises.

Inside, PO Beelitz and Sgt. Babington saw lights on in the basement, and heard the sound of a metal gate closing and a slide lock fastening into place. They also heard people moving

about in the basement. At this point, the officers suspected a robbery or burglary; however, they did not discuss their suspicion. They went downstairs and came upon the metal gate, which was locked. PO Beelitz stated something to the effect of, "We are police officers. We are trying to enter your premises to make sure everything is OK," however, PO Beelitz did not recall exactly what he said. Sgt. Babington used a pen to slide the gate's lock open; PO Beelitz did not recall Sgt. Babington causing any damage to the gate.

PO Beelitz issued six summonses during the incident. He obtained IDs, went back outside, and wrote the summonses while in the patrol car. PO Beelitz also vouchered the three boxes of alcohol that were in plain view behind the bar. The officers did not search the basement or look into the refrigerator for alcohol. PO Beelitz did not recall if the boxes were labeled. PO Beelitz recalled that individual bottles of alcohol were labeled. PO Beelitz did not recall if the boxes were open or closed. PO Beelitz did not recall if the bottles were open or closed. PO Beelitz recalled that odor of the bottle gave away that it was alcohol. PO Beelitz then stated that he was simply using the odor as an example to identify an alcoholic beverage. PO Beelitz recalled that there might have been unlabeled boxes. PO Beelitz recalled that he might have put single bottles of labeled alcohol into unlabeled boxes for vouchering purposes. Beelitz did not recall the number of bottles that were put in unlabeled boxes. PO Beelitz did not recall if he confiscated alcohol before or after he issued the summonses. PO Beelitz recalled that a pregnant lady at the scene was allowed to go outside with him as he went to his vehicle to write summonses. The rest of the individuals stayed in the basement. PO Beelitz returned to the basement to give out summonses. PO Beelitz explained that summonses were given out instead of arrests because the individuals had no active warrants.

When the officers stood at the metal gate, none of the officers stated, "Open the door or we'll shoot off the lock." None of the officers stated, "Everyone is going to jail". PO Beelitz did not recall if any of the officers searched inside additional rooms. PO Beelitz did not search inside the boiler room. PO Beelitz did not search a refrigerator. PO Beelitz did not recall seeing any other officer search a refrigerator. PO Beelitz believed that there was a refrigerator behind the bar, but he was uncertain.

Witness Officer: PO MATTHEW GORANS

- § 87(2)(b) -old white male, height 5'10", weight 175 pounds, brown hair and blue eyes.
- On the date of the incident, PO Gorans was assigned to the 67th Precinct Conditions Unit. He worked from 6:00 PM until 2:00 AM the following morning with PO Dominick Nasso in marked patrol car 1212. He was dressed in uniform.

Memo Book

PO Gorans made entries in his memo book relating to the incident. At 9:10 PM, PO Gorans made a stop at § 87(2)(b). Summonses were issued (encl.11a-11b).

CCRB Testimony

PO Gorans was interviewed at the CCRB on June 9, 2009 (encl.11c-11d). § 87(2)(g)

At approximately 9:00 PM on October 28, 2008, PO Gorans and PO Nasso were doing routine patrol when PO Gorans received a telephone call from PO Beelitz in regard to a social club at § 87(2)(b). PO Gorans and PO Nasso were told that PO Beelitz and Sgt. Babington needed help with some individuals who had been stopped at the location. PO Beelitz and Sgt. Babington were already inside the location when they called. PO Gorans and PO Nasso responded to the location. PO Gorans was familiar with the location and knew it operated as a

social club because he had been there once before. As a result, when the officers get 311 calls to the location, they immediately respond and take any necessary actions. However, PO Gorans did not recall getting any 311 calls that day he and PO Nasso were called to the location by PO Beelitz and Sgt. Babington.

When PO Gorans and PO Nasso arrived at the location, PO Gorans observed that the door was open. PO Gorans did not recall if the door was open all the way. PO Beelitz and Sgt. Babington were already inside when he and PO Nasso arrived. PO Gorans and PO Nasso entered and went to the basement. Once inside, PO Gorans observed PO Beelitz and Sgt. Babington questioning some of the individuals present in the basement. PO Gorans did not recall if there was a gate leading to the basement. PO Gorans did not recall seeing any damage to the basement door.

PO Gorans did not search the basement. None of the other officers searched the basement or the refrigerator. PO Gorans recalled that the basement was an open area, and the officers did not search other parts of the basement including the boiler room. PO Gorans believed that alcohol was confiscated. However, he did not confiscate any alcohol. He did not recall which officer confiscated the alcohol. None of the officers stated, "Open the door or else we'll shoot off the lock" or "Everybody is going to jail."

PO Gorans and PO Nasso took IDs from the individuals who were drinking and asked them to go outside. While outside, PO Gorans and PO Nasso checked for active warrants and issued summonses. PO Gorans believed that he issued at least one summons; however, it was also possible that only his partner issued the summonses.

Witness Officer: PO DOMINICK NASSO

- § 87(2)(b) -old white male, height 5'10", weight 235 pounds, brown hair and brown eyes.
- On the date of the incident, PO Nasso was assigned to the 67th Precinct Conditions Unit. He worked from 5:30 PM until 2:05 PM the following morning with PO Matthew Gorans in marked patrol car 1212. He was dressed in uniform.

Memo Book

PO Nasso made entries in his memo book relating to this incident. At 9:10 PM, PO Nasso served two summonses at § 87(2)(b) (encl.12a-12b).

Summonses

PO Nasso issued two summonses during the incident: § 87(2)(b) was issued to § 87(2)(b) and § 87(2)(b) was issued to § 87(2)(b). Both were for § 87(2)(b) (encl.12c).

CCRB Testimony

PO Dominick Nasso was interviewed at the CCRB on June 9, 2009 (encl.12d-12e). § 87(2)(g)

At approximately 9:00 PM on October 28, 2008, PO Nasso and PO Gorans were asked by either Sgt. Babington or PO Beelitz to assist in a stop at § 87(2)(b). Upon hearing the address of the location, PO Gorans told him that the location was an illegal social club; however, PO Nasso did not know whether PO Gorans had previously been to the location. PO Gorans did not provide him with any further details of the location.

When PO Nasso and PO Gorans arrived at the location, § 87(2)(b) appeared to be a legitimate § 87(2)(b) office. The business looked like it was closed for the day because the lights were turned off, but the main door was unlocked and open. Either PO Beelitz or Sgt. Babington was standing at the door, and the other officer was inside. This officer gave him a general account of the activities going on in the basement.

When PO Nasso entered the location and walked down the stairs toward the basement, he observed a metal gate guarding the basement. The gate was open. PO Nasso did not observe any physical damage to the gate. PO Nasso did not know how the gate had been opened. PO Nasso entered the basement and observed that a bar, TVs and tables were set up. There were approximately 10 people in the basement. Some of them were watching a sports game with opened beers in front of them. From the above stated observations, PO Nasso assumed that monetary exchanges were involved with the alcoholic beverages.

At this time, Sgt. Babington was conversing with § 87(2)(b) who was identified through investigation. Meanwhile, PO Nasso and PO Gorans checked some of the individuals' IDs and wrote summonses. PO Nasso wrote two summonses for § 87(2)(b). When asked why he did so, considering that the individuals were drinking indoors, PO Nasso explained that he issued the summons because "one would not expect to see alcoholic beverages inside a § 87(2)(b) office if it were open."

PO Nasso did not ask Sgt. Babington or PO Beelitz about how they had obtained entry into the location. None of the officers told PO Nasso that they had to pick the front lock in order to do so. PO Nasso does not keep a crowbar in his patrol car; the only similar device kept in the car is a tire iron. PO Nasso did not observe any of the officers holding a tire iron at the scene. PO Nasso did not search the basement. PO Nasso did not recall if any alcohol was confiscated. PO Nasso did not know if the other officers confiscated any alcohol. PO Nasso did not confiscate any alcohol.

Witness Officer: LT. JOHN MEIER

- § 87(2)(b) -old white male, height 6'0", weight 185 pounds, brown hair and blue eyes.
- *On the date of the incident, Lt. Meier was assigned to the 67th Precinct as the Platoon Commander. He worked from 2:45 PM until 11:30 PM with Sgt. Edward Babington and PO Mark Beelitz in marked patrol car 1627. He was dressed in uniform.*

CCRB Testimony

Lt. John Meier was interviewed at the CCRB on October 27, 2009 (encl.13c-13d). Lt. Meier, Sgt. Babington and PO Beelitz were patrolling in the vicinity of § 87(2)(b) when they observed the front gate (solid metal) of the location pulled halfway up. The front door of the location was fully closed; the door was glass. The lights were turned on. The 67th Precinct has problems with illegal social clubs, backyard parties, legal clubs, etc, to which the police are constantly responding (he indicated that 30% of the violence within the 67th Precinct stems from these issues). § 87(2)(b) in particular, is known as an illegal social club (drinking, gambling and illegal sale of alcohol are known to take place at the premises) and Lt. Meier has been to this location in the past (four months prior, summonses were issued at the location and alcohol was confiscated). Lt. Meier was unsure of whether the club was operating as a social club that night, however, he suspected that it was because the front gate was halfway open. He suspected a possible burglary; illegal social clubs are often targeted for burglaries. Lt. Meier instructed PO Beelitz, who was driving, to stop the patrol car. Sgt. Babington and PO Beelitz entered the location to investigate; Lt. Meier remained outside by the RMP.

Lt. Meier observed Sgt. Babington and PO Beelitz open the front door; it was closed, but appeared to be unlocked. Sgt. Babington and PO Beelitz did not pick the lock on the front door and at no time did they retrieve any tools from the RMP. Lt. Meier called for backup and additional officers responded – he believed that PO Gorans and PO Nasso responded. PO Gorans and PO Nasso entered the location; the door was still unlocked. The officers were inside the location for about 15 minutes. At some point, PO Gorans exited the location as he brought confiscated alcohol outside and placed it inside one of the patrol cars. PO Gorans then re-entered the location. Other officers may have exited and re-entered the location, however, at no time did they exit the location to retrieve a tool or crowbar from either patrol car. The officers did not tell Lt. Meier about what occurred inside the location other than that summonses were issued and alcohol, price listings (for alcohol), and flyers were confiscated (all of which was later vouchered). The officers did not tell Lt. Meier that they had to bend the metal on a locked gate inside the location in order to unlock it.

Lt. Meier did not enter the location at any time. He did not see or interact with any civilians at the scene or later at the precinct. Several boxes of assorted alcohol were confiscated (approximately 6 boxes).

NYPD Document(s)

SPRINT

The report indicates that at 9:17 PM on October 28, 2008, a business inspection was conducted at § 87(2)(b) and summonses were served (encl.14a).

Roll Call

The roll call from the 67th Precinct on October 28, 2008, tour three, shows that Lt. Meier was the Platoon Commander, and that Sgt. Babington was the Conditions supervisor. PO Beelitz, PO Gorans and PO Nasso were assigned to the Conditions team (encl.4b-4d).

Property Index

The Property Index from the 67th Precinct on October 28, 2008, does not show any vouchers for alcohol, alcohol price listings, flyers, or party signs retrieved from the incident location (encl.4e-4i).

Summonses for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York with regard to the incident.

Civilian(s) Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian(s) CCRB History

- § 87(2)(b) has filed the following CCRB complaints (encl.3):
 - § 87(2)(b)

- § 87(2)(b)

Subject Officer(s) CCRB History

- Sgt. Edward Babington has been a member of the service for six years and he has had one CCRB allegation substantiated against him. In case number 200715224, an allegation of premises entered and searched was substantiated against him. No disciplinary action was taken (encl.2a).
- PO Mark Beelitz has been a member of the service for four years and has had no CCRB allegations substantiated against him (encl.2b).

Conclusion

Identification of Subject Officer(s)

- Sgt. Babington acknowledged his role in this incident.

- § 87(2)(g)

- § 87(2)(g)

Investigative Findings and Recommendations

Allegations Not Pled

§ 87(2)(g)

Allegation A – Abuse of Authority: Sgt Edward Babington supervised the entry and search of § 87(2)(b) in Brooklyn.

§ 87(2)(g)

§ 87(2)(b) and his friends, who were playing dominoes and socially drinking in the basement, alleged that the officers picked the lock on the front door in order to enter the premises. § 87(2)(g)

Sgt. Babington and PO Beelitz testified that they were conducting routine patrol when they noticed that the front security gate of the location was halfway raised and the front door was slightly ajar. Sgt. Babington, who supervised the entry, suspected a possible burglary and decided to investigate further. Both Sgt. Babington and PO Beelitz denied that they had to pick the front lock in order to enter the premises.

Working with Sgt. Babington and PO Beelitz that night was Lt. Meier, who did not enter the premises, but remained near the patrol car and called for backup (two additional officers, PO Gorans and PO Nasso, arrived shortly later). Lt. Meier testified about his knowledge of the location and indicated that § 87(2)(b) is known to operate as an illegal social club. Lt. Meier also suspected a burglary, and indicated that illegal social clubs are often targeted for burglaries.

§ 87(2)(g)

Lt. Meier testified that the gate was halfway raised, but that the front door was fully closed. According to Lt. Meier, Sgt. Babington and PO Beelitz did not have difficulty opening the front door, and it was seemingly unlocked.

§ 87(2)(b) who works at a bodega across the street from the incident location, provided a witness statement. § 87(2)(b) upon filing this complaint, provided the CCRB with § 87(2)(b)'s first name only, and minimal contact information. The CCRB reached out to § 87(2)(b) who initially refused to participate in the investigation. Upon further contact, § 87(2)(b) eventually agreed to provide a statement and the undersigned investigator went to his place of employment in order to obtain a statement. § 87(2)(g)

§ 87(2)(b) testified that he witnessed two officers arrive at the location and ring the doorbell at least twice. The officers, who appeared to be avoiding the view of a camera, picked the lock on the front door. Two additional officers arrived shortly later and entered the premises as well; the door remained open and unlocked at that time. At some point, an officer exited the location and retrieved an object resembling a crow bar from one of the patrol cars.

§ 87(2)(g)

Furthermore, the SPRINT print-out indicated that the officers needed backup due to a “business inspection,” not due to their suspicion of a possible burglary.

Unlawful warrantless entries generally apply to private homes, but have also been applied to private commercial enterprises under certain narrow circumstances in which an individual has a reasonable expectation of privacy. As in People v. Ruggieri and Colton, 85 Misc. 2d 141 (1976), officers do not “have the right to enter a locked commercial warehouse without a warrant and without probable cause to believe that a violation of any municipal ordinance existed.” A search of commercial enterprises is allowable only if the business is open and accessible to the public (encl.1a).

§ 87(2)(g)

Allegation B – Abuse of Authority: An officer threatened to arrest § 87(2)(b)

§ 87(2)(b) and § 87(2)(b)

None of the civilians present during this incident saw which officer threatened to arrest them; they only heard the threat being made. Additionally, none of the officers acknowledged making this threat. § 87(2)(g)

Allegation C – Abuse of Authority: Sgt. Edward Babington damaged § 87(2)(b) **s property.**

§ 87(2)(g)

Sgt. Babington admitted to bending the metal on the interior gate which was locked and prevented the officers from gaining access to the basement. § 87(2)(g)

Allegation D – Abuse of Authority: Sgt. Edward Babington supervised the seizure of § 87(2)(b) **s property.**

§ 87(2)(g)

As in Ruggieri and Colton, at 141, absent probable cause that the property is evidence of a crime, the seizure of property within the enterprise follows the same standard; if the premises is not open and accessible to the public at the time that the property is seized, then the seizure is unlawful (encl.1a).

According to the officers, a copious amount of alcohol was seized from the premises. § 87(2)(g)

the officers testified that the alcohol was vouchered. However, according to the 67th Precinct Property Index from October 28, 2008, alcohol was not vouchered by any of the officers present during the incident § 87(2)(g)

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

§ 87(4-b) § 87(2)(g)

Team: _____

:

Investigator: _____	_____	_____
Signature	Print	Date

Supervisor: _____	_____	_____
Title/Signature	Print	Date

Reviewer: _____	_____	_____
Title/Signature	Print	Date

Reviewer: _____	_____	_____
Title/Signature	Print	Date

